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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re KENNETH F., Minor.

B211741

CHERISH M.,

(Los Angeles County
Super. Ct. No. CK69318)

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY OF
LOS ANGELES,

Respondent.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES
et al.,

Real Party in Interest.

PETITION for Extraordinary Writ. Petition denied.

Sophia Ali and Nicole Johnson for Petitioner.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant
County Counsel, and Kim Nemoy, Deputy County Counsel for Real Party in
Interest.

INTRODUCTION

Petitioner Cherish M. (Mother) is the mother of Kenneth F. The dependency court terminated reunification services and set the dependency proceeding for permanency planning hearing. (Welf. & Inst. Code, § 366.26.)¹ Mother filed a petition for extraordinary writ review. (Cal. Rules of Court, rules 8.450 & 8.452.) Mother contends she was not provided with adequate reunification services. She also contends there was insufficient evidence to support the dependency court's finding that she was not in compliance with the case plan. We affirm the ruling terminating reunification services and deny the petition for extraordinary writ. We also vacate the stay we issued on December 9, 2008.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The initial detention.*

In July 2007, Mother was placed on probation for burglary. She received a citation for marijuana possession in October 2007. In October 2007, Mother was a 17-year-old minor who was a juvenile court dependent. In the middle of October 2007, Mother's caretaker expressed concerns because Mother smoked marijuana with her friends, was not in school, and did not tend to the needs of her son, nine month-old Kenneth, who had a chronic cough.

At the end of October 2007, the foster care mother requested Mother be placed in another home because Mother possessed drugs. The police confiscated the drugs and Mother left her placement home with Kenneth. Mother, whose whereabouts were unknown, had a long history of leaving multiple placements. The foster care mother had informed the Department of Children and Family Services (the Department or DCFS) that Kenneth cried most of the time. The foster care mother also reported that Mother did not feed Kenneth baby food,

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code. We cite to the 2008 statutory scheme as it was in effect at the time of the ruling in issue.

reused dirty bottles to feed Kenneth, and wanted to use Benadryl for Kenneth, even though a physician had refused to prescribe the medicine.

On November 2, 2007, DCFS filed a petition pursuant to Section 300 alleging that Mother abused drugs and endangered Kenneth, placing Kenneth at risk of harm.² A detention hearing was held that day. Mother had returned Kenneth to her placement home, but Mother's whereabouts were unknown. Mother was under a Voluntary Family Maintenance contract with DCFS to complete a parenting education class, continue therapy, follow placement rules, remain in school, and make her and Kenneth's whereabouts known to DCFS. Although Mother had been in therapy, she was not in parenting classes and her permit to attend high school had been cancelled. Kenneth was ordered detained and the Department was ordered to provide reunification services and monitored visitation. Thereafter, it was learned that Mother had taken Kenneth to the home of a relative.

2. *The jurisdiction/disposition hearing.*

On December 17, 2007, a pretrial resolution conference and jurisdiction/disposition hearing was called. In a December 17, 2007, report, the DCFS social worker reported the following: Mother admitted having used marijuana, but stated she had not done so for two months. Mother denied using other drugs. Both Kenneth's maternal cousin and caretaker, and Mother's foster mother expressed concern as to whether Mother properly cared for Kenneth. After Kenneth was detained, Mother regularly visited him and actively participated in his caretaking. The hearing was continued to January 9, 2008, and then to January 22, 2008.

² There were also allegations as to Kenneth's father. The dependency court also terminated reunification services as to Kenneth's father. We have omitted most facts relating to Kenneth's father because he is not a party to these writ proceedings.

On January 22, 2008, the dependency court sustained an amended petition and took jurisdiction over Kenneth. The court found that Mother was a recent user of marijuana, which inhibited her ability to care for Kenneth, and the court found that Mother possessed drugs in the infant's home. As part of Mother's reunification plan, the court ordered Mother to participate in individual counseling with an approved therapist, parenting education, drug counseling, random drug testing, and weekly Narcotics Anonymous meetings. Mother was given monitored visitation and ordered to comply with the terms of her probation and take care of all warrants.

On February 19, 2008, Mother informed the social worker that she was attending the R.I.G.H.T. program, would be weekly drug tested, had enrolled in parenting education, and would enroll in the Didi Hirsch Mental Health Center for individual counseling. Although Mother provided a registration form from the Washington Adult School, she did not provide proof of compliance.

3. The section 366.21, subdivision (e) six-month hearing.

On July 14, 2008, the dependency court held a section 366.21, subdivision (e) six-month hearing. Mother was pregnant, not complying with the court orders, and for a week placed at a juvenile detention facility for violating probation. When she was released, Mother ran away from her foster home for a month. The social worker provided Mother with a bus pass and remained in contact with Mother's probation officer. Mother refused the social worker's referrals for services including, parenting classes, individual counseling, drug counseling and testing, and independent living program services. The social worker informed Mother that she was to receive six months of reunification services because of Kenneth's young age. Mother refused to make herself available for contact with the social worker for the month of June. Occasionally, the social worker saw Mother acting tenderly and lovingly with Kenneth. Mother stated she had been attending the R.I.G.H.T. program. However, the program would not release information on Mother's participation because Mother had not given her approval

to do so. Further, while Mother had drug tested twice (March 26 and April 18, 2008), she had failed to drug test on four other occasions (April 7, May 1, May 23, and June 17, 2008). Kenneth's caretaker reported that although Mother maintained contact with Kenneth, Mother only spent a few minutes with him. Kenneth's caretaker was willing to assume legal guardianship over Kenneth and was contemplating adoption. Mother's caretaker reported that Mother had stolen a check, making it out to a fake name. Mother was detained for a week.

DCFS recommended terminating reunification services. At Mother's request, the dependency court set the matter for a contested hearing.

4. The contested hearing.

A contested six-month (§ 366.21, subd. (e)) hearing was held on September 10, 2008. The social worker's service log was submitted to the court. According to a DCFS September 10, 2008, report, Kenneth's caretakers reported that Mother had only visited Kenneth three times a month and each visit lasting less than 20 minutes. During the visits, Mother simply watched television with Kenneth. In contrast, Mother reported that she had visited Kenneth three times a week and each visit lasted 30 minutes to 2 hours. The social worker was concerned because Mother did not have regular contact with Kenneth, did not have sufficient credits to earn a high school diploma, was not attending continuation school, refused to attend independent living programs, did not have, and refused to find, a job, had been pregnant several times, did not follow the rules of her placement, was not enrolled in individual counseling, and had been in more than 20 placements in 5 years. The social worker concluded it was not in Kenneth's best interest to continue reunification services even though Mother had completed a parenting education class, obtaining the grade of B. The hearing was continued.

On October 21, 2008, the dependency court announced that the matter was called "for a contested [Section 366.21(e)/.21(f)] hearing [and that the] Department is recommending that the court terminate reunification] services and

set a [Section 366.26] hearing.” DCFS submitted a report containing the following information: Mother had visited Kenneth 4 times during September; each visit lasted approximately 20 minutes, during which time Mother sent text messages to her friends. Mother had not visited Kenneth in October. Mother did not drug test through DCFS and failed to attend individual counseling. Mother did not take advantage of independent living program referrals. Kenneth’s caretaker was committed to adopting the child. Mother had submitted a certification of completion for the R.I.G.H.T. program, along with a letter from its program director. However, according to the social worker, the program was *not* a DCFS approved substance abuse program and personnel from the program had not verified whether it was a state-licensed drug treatment program. Additionally, while the R.I.G.H.T. director stated that the program drug tested enrollees approximately once per week, the program had not provided the social worker with drug testing results for Mother. There was conflicting information about the programs offered through R.I.G.H.T. Its director signed a certificate of completion for a “Drug and Alcohol Program and Parenting Class,” although other information stated that Mother had “successfully completed our California State Certified behavior modification counseling program.” DCFS recommended termination of reunification services.

At the October 21, 2008, hearing, Mother’s counsel argued and asserted the following: Mother was in substantial compliance with the case plan, even though counsel admitted Mother had not participated in individual counseling. Mother had consistently visited Kenneth and had made significant progress. Mother had never been informed that the R.I.G.H.T. program was not DCFS approved. Mother had been drug tested since enrolling in the R.I.G.H.T. program. Mother’s counsel requested that the dependency court approve R.I.G.H.T. as a drug program and that reunification services be continued. Counsel stated that Mother had not visited Kenneth regularly because there were difficulties scheduling visits with his caretaker.

Kenneth's counsel requested that the dependency court terminate reunification services because Mother had not been in a DCFS approved substance abuse program and Mother's visits with Kenneth had been inconsequential. This argument was consistent with that offered by DCFS's counsel.

The dependency court concluded it was not in a position to approve Mother's drug program and found that reasonable services had been provided to Mother, who was not in substantial compliance with the case plan. The court also found that it would be detrimental to return Kenneth to Mother. The court additionally found that even though DCFS had asked Mother to drug test through DCFS, she failed to do so consistently. The court expressed concern that Mother had not attended individual counseling. The court noted that visitation was a significant part of reunification and found that Mother had not consistently visited Kenneth. The dependency court terminated reunification services, but permitted continuation of monitored visitation. The court set the matter for a Section 366.26 hearing.

Mother timely filed a petition for extraordinary writ and requested a stay. On December 9, 2007, we issued a stay, requested an answer to the petition, and a response, and set the matter for argument.

DISCUSSION

DCFS offered reasonable reunification services. There was substantial evidence that Mother was not in compliance with the case plan. Thus, the order of the dependency court terminating reunification services is supported by the record.

Mother contends DCFS did not offer reasonable reunification services, she was in substantial compliance with the case plan, and thus, the dependency court could not terminate reunification services. These contentions are unpersuasive.

a. The statutory scheme.

If a child, such as Kenneth, is under the age of three, the Legislature has established an expedited track for dependency cases. (*Tonya M. v. Superior Court*

(2007) 42 Cal.4th 836, 846.) On the date of the initial removal of such children, the dependency court shall order reunification services, not to exceed a period of “six months from the date the child entered foster care.” (§ 361.5, subd. (a)(2); *Tonya M.*, *supra*, at p. 843.)

If the child was under the age of three years on the date of the initial removal, at the six-month review hearing the dependency court may terminate reunification services and schedule a hearing pursuant to Section 366.26 upon a finding by clear and convincing evidence “that the parent [failed] to participate regularly and make substantive progress in court-ordered treatment programs” (366.21, subd. (e).) If, however, the dependency court finds there is a substantial probability that the child may be returned to the parent within six months “or that reasonable services have not been provided,” the court shall continue the case to the [Section 366.21, subdivision (f)] 12-month permanency review hearing. (§ 366.21, subds. (e) & (g)(1); § 361.5, subd. (a)(2) & (3).)³

“Notwithstanding paragraphs (1), (2), and (3) [of Section 361.5, subdivision (a)], court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan

³ Section 361.5, subdivision (a)(2) reads: “For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months from the date the child entered foster case.”

A child is deemed to have entered foster care on the earlier of the date of the jurisdictional hearing, or 60 days after the child’s initial detention. (§ 361.5, subd. (a).) Here, Kenneth was initially detained on November 2, 2007, and the jurisdictional hearing was held on January 22, 2008. (See *Tonya M. v. Superior Court*, *supra*, 42 Cal.4th at p. 846 [when considering whether to offer further services at six-month review hearing, the dependency court should determine whether there is a substantial likelihood of reunification by the 12-month date, as measured relative to the child’s initial removal into custody or the jurisdictional or dispositional hearing, not measured as six months beyond the date of the six-month review hearing date].)

for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian.” (§ 361.5, subd. (a)(3); see *Tonya M. v. Superior Court*, *supra*, 42 Cal.4th at p. 843.)

In making a ruling at the Section 366.21, subdivision (e) hearing, the court considers if the parent consistently and regularly contacted and visited the child, made significant progress in resolving the problems that led to the child’s removal, and demonstrated the capacity and ability to complete the treatment plan and provide for the child’s safety. (§ 366.21, subd. (g)(1).)

If at the Section 366.21, subdivision (e) hearing the dependency court determines that the child may be returned to the parent within six months, the court shall continue the case to the 12-month Section 366.21, subdivision (f) permanency hearing. (§ 366.21, subd. (e).)

When the six month hearing is more than six months from the date the child entered foster care, the 12 months is calculated from the time the child entered foster care and not from the date of the six month hearing. (*Tonya M. v. Superior Court*, *supra*, 42 Cal.4th at p. 846, see fn. 3.) At the 12-month Section 366.21, subdivision (f) hearing, the dependency court determines whether the child will be returned to the child’s home within the time limits provided in Section 361.5, subdivision (a), which under some circumstances could permit the parent to receive 18 months of reunification services. (§ §366.21, subd. (g)(1), 361.5, subd. (a)(3).)

Thus, “[t]he absolute maximum period for services is 18 months (§ 361.5, subd. (a)), provided the court determines at both a six-month review hearing and a 12-month review hearing that continuation of services is warranted (see § 366.21, subd. (e) [establishing procedures for the six-month review hearing]; *id.*, subds.

(f), (g) [establishing procedures for the 12-month review hearing]).” (*Tonya M. v. Superior Court*, *supra*, 42 Cal.4th at p. 843.)

We review the dependency court’s order terminating reunification services for substantial evidence to support the order. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758.) Issues of fact and credibility are reserved for the juvenile court. (*In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 1132, abrogated by *People v. Brown* (1994) 8 Cal.4th 746, 763)

b. *There is substantial evidence to support the dependency court’s finding that reasonable services were provided to Mother.*

Mother contends there was no substantial evidence to support the dependency court’s finding that reasonable reunification services were offered to her. This contention is not persuasive.

“The adequacy of reunification plans and the reasonableness of DCFS’s efforts are judged according to the circumstances of each case. [Citation.]” (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.) “The applicable standard of review is sufficiency of the evidence. [Citation.]” (*Id.* at p. 1346; accord, *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.) “If there is substantial evidence supporting the judgment, [the reviewing court’s] duty ends and the judgment must not be disturbed. [Citations.]” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

Services are reasonable “if the Department has ‘identified the problems leading to the loss of custody, offered services to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult’ [Citation.]” (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972-973.) “The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances. (*In re Misako R.* [, *supra*,] 2 Cal.App.4th [at p.] 547.)” (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

Here, the Department provided bus passes to Mother and gave her referrals for individual counseling, drug counseling and testing, independent living programs, and parenting classes. Mother had ample visitation opportunities. Further, while Mother was entitled to six-months of reunification services, she was actually provided almost 10 months of reunification services after the jurisdiction hearing and the date Kenneth entered foster care. (Kenneth entered foster care 60 days after the initial detention. See fn. 3.)

Mother suggests she was not given sufficient services because the Department failed to inform her that the R.I.G.H.T. program was not DCFS approved. However, Mother never provided consent forms so the Department could obtain information from R.I.G.H.T. Mother did not provide information about the program until October 2008. Mother declined the directives of the social worker that she be drug tested through the Department. Thus, any lack of knowledge Mother might have had about whether R.I.G.H.T. was approved was due to Mother's fault, and not the Department's.

Further, the dependency court's decision to terminate services was not based upon Mother's failure to attend an approved drug program, but upon Mother's numerous other failures, including that she failed to drug test consistently through DCFS and failed to comply with the requirement to attend individual counseling. The court also noted that visitation was a key component of the reunification plan, and Mother had not done so consistently. Thus, even if R.I.G.H.T. had been an approved drug program, the dependency court's decision would not have changed. (Compare with *Amanda H. v. Superior Court*, *supra*, 166 Cal.App.4th 1340 [social worker incorrectly informs parent and dependency court that the parent had enrolled in all required court-ordered programs; after a year, the worker informs the court that the parent had not been properly enrolled; dependency court errs in terminating reunification services because the parent was unaware of the lack of court-ordered services until the 12-month review hearing].)

There is substantial evidence to support the finding that the Department provided reasonable reunification services to Mother.

c. There is substantial evidence to support the dependency court's decision to terminate reunification services.

Here, jurisdiction was taken over Kenneth on January 2, 2008. Ten months later, on October 21, 2008, the dependency court terminated reunification services. The court called the October 21, 2008, hearing a “contested [Section 366.21(e)/.21(f)] hearing . . .” at which the Department was “recommending that the court terminate reunification services and set a [Section 366.26] hearing.”

Mother contends that the record lacks substantial evidence to support the dependency court's ruling that she was not in substantial compliance with the case plan.

As noted above, Mother failed to comply with the case plan in numerous ways, including failing to drug test consistently through DCFS. Even if R.I.G.H.T. was a drug program, there is nothing in the record to verify if Mother was tested by the program, or the results thereof. Additionally, even if R.I.G.H.T. offered other programs, there is nothing describing the content of these programs and thus, whether they would meet the standards required by the court or DCFS. Mother failed to comply with the requirement to attend individual counseling, and significantly, she failed to consistently visit Kenneth. She did not visit Kenneth at all in October 2008. When she did visit with him, the contacts were inconsequential. Further, Mother had a long history of failing to abide by rules of any kind. She had trouble with her own foster placements, having been in more than 20 foster homes. She had been placed in a juvenile detention facility for violating probation, ran away from her foster home, refused referrals from the social worker, and failed four drug tests in 2008. She had a transient lifestyle and appeared incapable of maintaining a stable home. She had no means of support, nor an education or a desire to obtain a job. Mother failed to make significant progress in resolving the problems that led to her child's removal, and there was

no information suggesting that she had the capacity and ability to complete the treatment plan. Even though she received parenting education, Mother was not attending school. She did not maintain a stable home. She stole from one of her caretaker's homes.

Mother's history did not show that she would ever complete a treatment plan or provide for the safety of her child.

These facts provide substantial evidence to support the dependency court's finding that Mother was not in substantial compliance with the case plan and that to return Kenneth to Mother would be detrimental to him. They also support the dependency court's implied finding that there was no substantial probability that Kenneth would be returned to Mother within a two-month time frame, as that would be 12 months from the date Kenneth was taken into foster care. It would have been fruitless to provide Mother with additional services.⁴

There is substantial evidence to support the decision to terminate reunification services.

⁴ The dependency court referenced the hearing as a combined six-month and 12-month review hearing. It would have been premature to conduct a 12-month review hearing because the hearing occurred only 10 months since Kenneth's placement in foster care. However, the decision to terminate reunification services would have been supported even if the hearing occurred at a 12-month hearing as there was no reason to extend services. The facts would support a finding that extending the period of reunification services to the 18-month hearing was unwarranted as it was not substantially probable that Kenneth would be returned to Mother even if services were extended to that hearing.

DISPOSITION

The petition for extraordinary writ is denied. The stay issued on December 9, 2008, is hereby vacated. Pursuant to California Rules of Court, rule 8.264(b)(3), this opinion is made final forthwith as to this court.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.